

NOTICE OF PRIVACY PRACTICES FOR PROTECTED HEALTH INFORMATION

Drafted from the Office of Civil Rights Guidance Explaining Significant Aspects of the Privacy Rule published on December 4, 2002. <http://www.hhs.gov/ocr/hipaa/privacy.html>)

Background

The HIPAA Privacy Rule gives individuals a right to be informed of the privacy practices of their health plans and of most of their health care providers, as well as to be informed of their privacy rights with respect to their health information. Health plans and covered health care providers are required to develop and distribute a notice that provides a clear explanation of these rights and practices. The notice is intended to focus individuals on privacy issues and concerns, and to prompt them to have discussions with their health plans and health care providers and exercise their rights.

How the Rule Works

General Rule. The Privacy Rule provides that an individual has a right to adequate notice of how a covered entity may use and disclose protected health information about the individual, as well as his or her rights and the covered entity's obligations with respect to that information.

Content of the Notice. Covered entities are required to provide a notice in *plain language* that describes:

- How the covered entity may use and disclose protected health information about an individual.
- The individual's rights with respect to the information and how the individual may exercise these rights, including how the individual may complain to the covered entity.
- The covered entity's legal duties with respect to the information, including a statement that the covered entity is required by law to maintain the privacy of protected health information.
- Whom individuals can contact for further information about the covered entity's privacy policies.
- The notice must include an effective date.

Providing the Notice

- Make the notice available to any person who asks for it.
- Prominently post and make available its notice on any web sites we maintain that provide information about customer services or benefits.
- Promptly revise and distribute the notice whenever there are material changes to any of our privacy practices.

Health Plans must also:

- Provide the notice to individuals then covered by the plan no later than April 14, 2003 and to new enrollees at the time of enrollment.
- Provide a revised notice to individuals then covered by the plan within 60 days of a material revision.
- Notify individuals then covered by the plan of the availability of and how to obtain the notice at least once every three years.

Covered Direct Treatment Providers must also:

- Provide the notice no later than the date of first service delivery after April 14, 2003 and except in an emergency treatment situation, make a good faith effort to obtain the individual's written acknowledgment of receipt of the notice.
- If an acknowledgment cannot be obtained, the provider must document his or her efforts to obtain the acknowledgment and the reason why it was not obtained.
- In an emergency treatment situation, provide the notice as soon as it is reasonably practicable to do so after the emergency situation has ended.
- Make the latest notice available at the provider's office or facility for individuals to request to take with them, and post it in a clear and prominent location at the facility.

NOTICE OF PRIVACY PRACTICES FOR PROTECTED HEALTH INFORMATION Some Frequently Asked Questions

Q: Can covered entities distribute their notices as part of other mailings or distributions?

A: Yes. The HIPAA Privacy Rule provides covered entities with discretion in this area; no special or separate mailings or distributions are required to satisfy the Privacy Rule's notice distribution requirements. Thus, a health plan distributing its notice through the mail, in accordance with 45 CFR 164.520(c)(1), may do so as part of another mailing to the individual (e.g., by including the notice with Summary Plan Descriptions). Similarly, a covered entity that e-mails its notice to an individual, in accordance with 45 CFR 164.520(c)(3), may include additional materials in the e-mail. No separate e-mail is required. However, the Privacy Rule continues to prohibit covered entities from combining the notice in a single document with an authorization form (see 45 CFR 164.508(b)(3)); and direct treatment providers, other than in emergency situations, must provide the notice at or before the date of first service delivery, and must make a good faith effort to obtain the individual's written acknowledgment of receipt of the notice.

Q: Does the HIPAA Privacy Rule require a health care provider to obtain a new acknowledgment of receipt of the notice from patients if the facility changes its privacy policy?

A: No. A covered health care provider with a direct treatment relationship with individuals is required to make a good faith effort to obtain an individual's acknowledgment of receipt of the notice only at the time the provider first gives the notice to the individual- that is, at first service delivery.

Q: Does the HIPAA Privacy Rule require a business associate to create a notice of privacy practices?

A: No. However, a covered entity must ensure through its contract with the business associate that the business associate's uses and disclosures of protected health information and other actions are consistent with the covered entity's privacy policies, as stated in covered entity's notice. Also, a covered entity may use a business associate to distribute its notice to individuals.

Q: Are health plans required to make a good faith effort to obtain from their enrollees a written acknowledgment of receipt of the notice?

A: No. Under the HIPAA Privacy Rule, only covered health care providers that have a direct treatment relationship with individuals are required to make a good faith effort to obtain the individual's acknowledgment of receipt of the notice.

Q: How are health care providers supposed to provide the notice to individuals and obtain their written acknowledgment of the notice when the first treatment encounter is over the phone or in some other manner that is not face-to-face?

A: The HIPAA Privacy Rule is intended to be flexible enough to address the various types of relationships that covered health care providers may have with the individuals they treat, including those treatment situations that are not face-to-face. For example, a health care provider who first treats a patient over the phone satisfies the notice provision requirements of the Privacy Rule by mailing the notice to the individual the same day, if possible. To satisfy the requirement that the provider also make a good faith effort to obtain the individual's acknowledgment of the notice, the provider may include a tear-off sheet or other document with the notice that requests that the acknowledgment be mailed back to the provider. The health care provider is not in violation of the Rule if the individual chooses not to mail back an acknowledgment; and a file copy of the form sent to the patient would be adequate documentation of the provider's good faith effort to obtain the acknowledgment. Where a health care provider's initial contact with the patient is simply to schedule an appointment or a procedure, the notice provision and acknowledgment requirements may be satisfied at the time the individual arrives at the provider's facility for his or her appointment.

Q: As a pediatrician, am I required to give my notice of privacy practices to the children I treat?

A: The HIPAA Privacy Rule requires a covered health care provider with a direct treatment relationship with the individual to provide the notice to the individual receiving treatment no later than the date of first service delivery. In cases where the individual has a personal representative, as is generally the case when a parent brings a child in for treatment, the provider satisfies the notice distribution requirements by providing the notice to the personal representative (e.g., the child's parent), and making a good faith effort to obtain the personal representative's acknowledgment of the notice. In the limited cases where the parent is not the personal representative of the unemancipated minor, such as when the minor is authorized under State law to consent to the treatment and does so, the provider must give its notice to the minor and make a good faith effort to obtain the minor's acknowledgment of the notice.

Q: Can a covered entity bypass obtaining an individual's authorization for a use or disclosure not permitted by the HIPAA Privacy Rule simply by informing individuals of the use or disclosure through its notice of privacy practices?

A: No. A covered entity's notice is not a substitute for an individual's authorization. Covered entities are required to obtain the individual's written authorization for any use or disclosure of protected health information not permitted or required by the Privacy Rule. Simply including in the notice a description of such a use or disclosure does not obviate the need for the covered entity to obtain the individual's prior written authorization, when that authorization is required by the Rule. Instead, the notice must reflect the uses and disclosures a covered entity may make without the individual's authorization, as permitted by Privacy Rule, as well as state that any other uses or disclosures only will be made with the individual's written authorization.

Q: Is our medical practice required to notify patients through the mail of any changes to our notice?

A: No. The HIPAA Privacy Rule does not require a covered health care provider to mail out its revised notice or otherwise notify patients by mail of changes to the notice. Rather, when a covered health care provider with a direct treatment relationship with individuals makes a change to his notice, he must make the notice available upon request to patients or other persons on or after the effective date of the revision, and, if he maintains a physical service delivery site, post the revised notice in a clear and prominent location in his facility. In addition, the provider must ensure that the current notice, in effect at that time, is provided to patients at first service delivery, and made available on his customer service web site, if he has one.

Q: Is a physician required to give her notice to every patient or can she just post the notice in her waiting room and give a copy to those patients who ask for it?

A: The HIPAA Privacy Rule requires a covered health care provider with direct treatment relationships with individuals to give the notice to every individual no later than the date of first service delivery to the individual and to make a good faith effort to obtain the individual's written acknowledgment of receipt of the notice. If the provider maintains an office or other physical site where she provides health care directly to individuals, the provider must also post the notice in the facility in a clear and prominent location where individuals are likely to see it, as well as make the notice available to those who ask for a copy.

Q: It is common practice for hospitals and other health care providers to collect preoperative information over the phone from a new patient prior to the day of surgery in order to determine whether the patient has any special medical concerns or issues that need to be addressed. Does the HIPAA Privacy Rule prohibit this practice if the patient has not yet received or acknowledged the provider's notice?

A: No, the Privacy Rule does not prohibit this practice. Where a health care provider's initial contact with a patient is simply to schedule an appointment or a procedure, or to collect information in anticipation of an appointment or a procedure, the Privacy Rule's requirements for providing the notice and obtaining a patient's acknowledgment of the notice may be satisfied at the time the individual arrives at the provider's facility for his or her appointment or procedure.